

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1210

United States Court of Appeals

For the Second Circuit

GIOVANNI GENTILE,

Plaintiff-Appellant,

against

KONINKLIJKE NEDERLANDSCHE STOOMBOOT
MAATSCHAPPIJ N. V.,

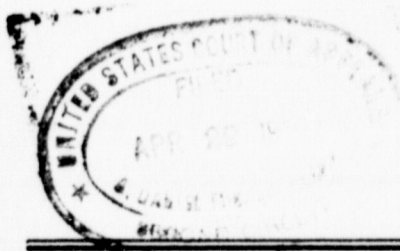
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX TO APPELLANT'S BRIEF

ZIMMERMAN & ZIMMERMAN,
Attorneys for Plaintiff-Appellant,
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BA 7-1350



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Relevant Docket Entries

August 31, 1972—Filed complaint and issued summons

. . .

October 4, 1972—Filed Answer by defendant to Complaint

. . .

December 11, 1973—Filed Judgment: Ordered that defendant * * * have judgment against the plaintiff dismissing the complaint with costs to be taxed. Judgment entered clerk. * * *

. . .

January 9, 1974—Filed plaintiff's notice of appeal from judgment entered December 11, 1973 by Levet, J. Mailed copy to Burlingham, Underwood & Lord.

. . .

Complaint

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff, complaining of the defendant above-named, by Zimmerman & Zimmerman, his attorneys, respectfully alleges:

I. Upon information and belief, the defendant is a foreign corporation.

II. Upon information and belief, the defendant does not have its principal place of business in the State of New York.

Complaint

III. Plaintiff is a citizen and resident of the State of New York.

IV. That the matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00) Dollars.

V. Upon information and belief, that at all the times herein mentioned, the defendant was the owner of the vessel, the M. V. Ammon.

VI. Upon information and belief, that at all the times herein mentioned and prior thereto, the defendant manned said vessel and its master, officers and crew were on board said vessel and in possession of same.

VII. Upon information and belief, that at all the times herein mentioned and prior thereto, the defendant managed, operated, maintained and controlled said vessel.

VIII. Upon information and belief, that at all the times herein mentioned, said M. V. Ammon was docked at the 39th Street Pier, Brooklyn, New York, and stevedoring work was being performed thereon.

IX. Upon information and belief, that at all the times herein mentioned, the stevedoring work on said vessel was being performed by Northeast Stevedoring Company, Inc., pursuant to agreement with the defendant or its agents.

X. Upon information and belief, that at all the times herein mentioned, said stevedoring work was being performed on said vessel under the general supervision and direction of the defendant, its agents, employees, the master, officers and crew of said vessel.

Complaint

XI. That at the time hereinafter mentioned, plaintiff was employed as a longshoreman by said Northeast Stevedoring Company, Inc. and, in the course of the performance of his duties, was lawfully on said vessel, in the tween deck thereof.

XII. Upon information and belief, that at all the times herein mentioned and prior thereto, the defendant, its agents, employees, the master, officers and crew of said vessel maintained the tween deck level of said vessel herein mentioned.

XIII. Upon information and belief, that at all the times herein mentioned and prior thereto, said tween deck level of said vessel was maintained, supplied and provided by the defendant to longshoremen for use in connection with the performance of their stevedoring work on said vessel.

XIV. Upon information and belief, that at all the times herein mentioned and prior thereto, the tween deck level of said vessel had various cases lying about said deck.

XV. Upon information and belief, that at all the times herein mentioned and prior thereto, said cases herein mentioned were maintained by the defendant in said tween deck of said vessel.

XVI. Upon information and belief, that at all the times herein mentioned and prior thereto, the defendant, its agents, employees, the master, officers and crew of said vessel maintained said deck with various cases therein as aforesaid, with grease on some of the cases, making

Complaint

said deck dangerous, hazardous and not suitable or safe for use by longshoremen, and the defendant so maintained, supplied and provided same for use by said longshoremen.

XVII. That on or about the 22nd day of May, 1970, while plaintiff was engaged in the performance of his work and was lawfully in said hatch, when he was caused to slip and fall into a hole and to sustain severe personal injuries.

XVIII. That said accident was caused by reason of the unsafe and unseaworthy condition of said vessel and by reason of the carelessness and negligence on the part of the defendant, its agents, employees, the master, officers and crew of said vessel, and without any contributing fault or lack of care on the part of the plaintiff; in that they failed to supply plaintiff with a safe place to work; in that they failed to maintain, supply and provide suitable, safe and proper walking and working surfaces; in that they maintained the walking and working areas on said vessel in a dangerous and hazardous condition with grease thereon, rendering same excessively slippery and hazardous; in that they permitted grease to be, remain and fall into said hatch and remain on the cargo therein, thereby creating a slippery and hazardous condition; in that they maintained said tween deck level in a dangerous, obstructed, slippery and hazardous condition, not suitable or safe for use or for the purposes intended, and such unsuitability caused the very accident complained of; in that they unnecessarily exposed the plaintiff to harm and to the very accident complained of, which was foreseeable; in that they maintained said con-

Complaint

dition in said hatch as aforesaid which constituted a trap and a nuisance under the circumstances; in that they violated the Safety and Health Regulations for Longshoring; in that they failed to remedy or repair the conditions complained of; in that they failed to warn the plaintiff thereof; in that they failed to take reasonable precautions to see that said deck was safe for use and to make same safe for use; in that they improperly directed and permitted the plaintiff to perform his work on said vessel under the circumstances which were dangerous and hazardous; in that they permitted said vessel to be, become and remain unsafe and unseaworthy and so maintained same; in that they failed to avoid said accident, although they had reasonable opportunity to do so; and in that they were careless and negligent in other respects and said vessel was otherwise unsafe and unseaworthy.

XIX. That as a result thereof, the plaintiff sustained certain severe personal injuries, both internal and external, to divers parts of his arms, head, legs and body, and he was made sick, sore, lame and disabled and suffered a severe shock to his nervous system, and plaintiff believes that some of the injuries he sustained may remain permanent.

XX. That plaintiff was compelled to expend divers sums of money for medical aid and attention in the endeavor to cure himself of the injuries he sustained and may in the future be compelled to expend further sums of money for such purpose, and plaintiff was and may in the future be unable to pursue his usual vocation, to his damage.

Complaint

XXI. That by reason of the premises, plaintiff has sustained damage in the sum of One Hundred Thousand (\$100,000.00) Dollars.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of One Hundred Thousand (\$100,000.00) Dollars, besides the costs and disbursements of this action.

ZIMMERMAN & ZIMMERMAN
Attorneys for Plaintiff

Answer

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, by its attorneys Burlingham, Underwood & Lord, answering plaintiff's complaint, states upon information and belief:

1. Admits the allegations of paragraphs I, II, and V.
2. Denies knowledge of information sufficient to form a belief as to the truth of the allegations of paragraphs III, IV, and XI.
3. Admits the allegations of paragraphs VI, VII, and XII, except insofar as the vessel, portions thereof, her

Answer

appurtenances, gear, etc. where manned, possessed, managed, operated, maintained, or controlled by others, and except insofar as the master, officers, or crew were temporarily ashore.

4. Denies the allegations of paragraphs VIII and IX, except admits that on May 22, 1970 M. V. Ammon was being stevedored at 39th Street Terminal, Brooklyn by Northeast Stevedoring Co., Inc.

5. Denies the allegations of paragraphs X, and XIII through XXI, inclusive.

6. The injuries and damages complained of, if any, were caused or contributed to by plaintiff's negligence or by the negligence, fault, breach of contract, or breach of warranty of and by persons for whose conduct defendant is not liable.

WHEREFORE, defendant demands judgment dismissing the complaint with its costs and disbursements.

BURLINGHAM UNDERWOOD & LORD
Attorneys for Defendant

By (Illegible)
A Member of the Firm

Transcript of Proceedings
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Before:

HON. RICHARD H. LEVET,
District Judge.

New York, N. Y.
December 11, 1973
10:00 a.m.

APPEARANCES:

ZIMMERMAN & ZIMMERMAN, ESQS., Attorneys for Plaintiff,
160 Broadway, New York, New York, By: Martin Baxter,
Esq., of Counsel.

BURLINGHAM, UNDERWOOD & LORD, ESQS., Attorneys for Defendant,
25 Broadway, New York, N. Y., By: John Ingram,
Esq., of Counsel.

(2)

The Court: Good morning.

(Case called.)

Mr. Baxter: The plaintiff is ready, your Honor.

Mr. Ingram: The defendant is ready, your Honor.

The Court: Select a jury.

(A jury of six was duly impanelled and sworn.)

(Two alternate jurors were sworn.)

Colloquy

The Court: Now, to the jurors who are to hear this case, a few fundamental instructions.

First, do not talk to anyone about this case or what is going on here.

Secondly, do not permit anyone to talk to you about this case.

Thirdly, do not even talk with each other about the progress of the case until you ultimately retire to determine your verdict.

Lastly, keep an open mind throughout.

The clerk will show you where to go now. We will have a short recess.

Counsel will remain a couple of minutes.

(Jury absent.)

The Court: How long do you want, Mr. Baxter, for opening? Let me ask you this question: do you insist on an opening?

(3)

Mr. Baxter: I would like to just have a very short opening, your Honor.

The Court: Five minutes?

Mr. Baxter: That would be enough, your Honor.

The Court: How about you?

Mr. Ingram: Five minutes is fine, your Honor.

The Court: All right.

As you were informed previously, this case will be tried on a split basis pursuant to Rule 42b; that is the case on liability will be first submitted and determined. We will take it up from there.

All right.

(Recess.)

Opening Statement by Mr. Baxter

(In open court; jury present.)

The Court: Members of the jury: we are now ready for what is called opening statements.

Each lawyer has the privilege of making a short, brief, concise statement about what the case refers to, what is involved, what will be the probable evidence.

Of course, you must remember always that whatever the lawyers say is not evidence. The evidence must come from witnesses who take the stand or exhibits which are admitted into evidence or possibly in some instances depositions, which are recorded statements in an examination

(4)

before trial. However, these expressions by each lawyer are helpful to the members of the jury and to the court.

First then, for the plaintiff, Mr. Baxter.

Mr. Baxter: Your Honor, Mr. Ingram, ladies and gentlemen of the jury:

This is going to be a very brief opening because it's a very brief case. I intend to call the plaintiff himself. He will be testifying through an Italian interpreter. I intend—

The Court: Don't let your voice fall.

Mr. Baxter: I intend to call a second witness who will testify through the Italian interpreter and I will have a third witness, and he will be the hatch boss. The other man was the winchman. This calls for a little explanation on what hatch boss means, what winchman is and what the plaintiff is, who was at the time a holdman.

These men are stevedores and they work for a stevedoring outfit. They are technically longshoremen.

Their job is to work in gangs. They have maybe eight holdmen, three deckmen or four deckmen, four dockmen plus a hatch boss. They are assigned to a ship to work a particular hatch. They either discharge or load a vessel.

Opening Statement by Mr. Baxter

The testimony you will hear today will be that they were loading the vessel. In fact, they were completing

(5)

this hatch. A hatch basically is a great big open space on a ship, usually from one side of the ship to the other, which we call the skin. It has an opening at the top which is called the square of the hatch. This may be anywhere from 20 feet long to maybe 15 feet or maybe 40 feet, whatever the different vessels are. Some have small hatches, some have large hatches. Actually it won't be too much of interest how large that hatch is because the testimony will show they were actually in the process of finishing up and they could see over what they call the coaming of the hatch.

You will hear testimony that the coaming of the hatch is that part of the structure of the vessel which comes up sometimes about three feet or so and you step over it and you are on the main deck of the vessel.

We will have testimony that they were loading general cargo. These are various sized cases and you will hear the testimony from the witnesses that they stow it as they can, as best they can, and, further, after that they lay separation paper. This is rather important.

Separation paper is colored paper which was laid and is laid on top of cargo, and this is what the testimony will be, to separate it from port to port. They are loading a ship, we will say, for England, and, let's say, everything up to the top of this level of the table goes to England,

(6)

but they have something that goes to Germany or France. They will put separation paper over it and put the French or German cargo on top of it. This is for ease of discharge at the other side. This is a very crucial part of our case.

Opening Statement by Mr. Baxter

This case involves the plaintiff, Giovanni Gentile, and this will be his testimony, as he is taking a piece of cargo off a pallet, which is maybe a four by five piece of wood, which is brought down with a lot of cargo on it, is landed in the square, the bridles are taken off and brought up by the winchman and then the longshoremen take the cases and stow them—stow means to place them and try and get level footing so that the stow will be even. You don't want it with steps because it would not ride well when it goes on its ocean voyage.

As he took this case and started to go away from the pallet to stow it, his foot goes through the separation paper, which he didn't lay, which will be his testimony, and going through this paper, his left leg goes through a wide space in the cargo and he injures himself.

Now, as his Honor has already told you, we are going into liability on this aspect of the trial. So you will hear nothing about the injury he suffered except that he claims he was injured.

That, in a nutshell, is what the plaintiff

(7)

expects to prove through himself, through the winch operator and through the hatch boss. So please pay careful attention, as his Honor has already asked you, and please keep an open mind because that way you will be fair to both sides, both the shipowner, the Royal Netherlands Steamship Company, and to my plaintiff, Giovanni Gentile.

Thank you.

The Court: For the defendant, Mr. Ingram.

Mr. Ingram: Judge Levet, Mr. Baxter, ladies and gentlemen of the jury:

I represent the Royal Netherlands Steamship Company. It's a Dutch flag cargo company, carries general cargo, con-

Opening Statement by Mr. Ingram

tainers from New York, east coast, U. S. down to the Caribbean. Because of the system here in the United States, when a ship comes into port we engage a stevedoring company to come on board——

Mr. Baxter: Objection. If he is going to prove this; your Honor—that's what the opening is for. He hasn't listed any witnesses to prove this.

The Court: That's his problem, counsellor.

Mr. Baxter: I object to the opening on that basis, your Honor.

The Court: Overruled.

If he doesn't, the jury may draw such conclusions.

(8)

It's up to the plaintiff to prove his case. The defendant doesn't have to disprove anything.

Proceed. The objection is overruled, counsellor.

Mr. Ingram: What I am trying to do, ladies and gentlemen, Mr. Baxter, is giving you a little background into the operation——

The Court: Obviously I assume that you are not making assertions unless you propose to offer proof about those assertions.

Mr. Ingram: Well, the plaintiff is suing Royal Netherlands Steamship Company for negligence and unseaworthiness.

The judge will charge you at the end of this trial, the liability portion, as to what is negligence and what is unseaworthiness. The judge will tell you the mere fact there is an accident doesn't make someone liable——

Mr. Baxter: This is summation, your Honor, rather than opening. Objection.

Opening Statement by Mr. Ingram

The Court: I think this is a fair statement. Overruled again.

You have to give the opposite side a fair chance on an opening. As I have said, it isn't proof merely because a lawyer asserts it.

Mr. Ingram: What I would ask you, since

(9)

Mr. Baxter previously has gone over what we are going to be trying here today, is to keep an open mind when you listen to these witnesses. Do not make up your minds until the end of the trial, until after the judge has given you the law.

I just ask you to listen intently to the evidence.

Thank you.

The Court: Very well.

As stated, and I will state it from the bench, this case is being tried on what is called a split basis; that is, first on liability only. You will have nothing at this point to do with any specific claims of injuries. All that you will be expected to determine is whether or not this defendant, shipping company, is liable to this plaintiff, this longshoreman.

You may proceed.

Mr. Baxter: Mr. Giovanni Gentile, please.

May I have the interpreter?

The Court: Yes bring up the interpreter, too. Swear him in first.

(Anthony Amarante was sworn as the Italian interpreter by the clerk of the court.)

Giovanni Gentile—for Plaintiff—Direct

(10)

GIOVANNI GENTILE, the plaintiff, being first duly sworn, testified through the Italian interpreter as follows:

The Court: Before we go on, a word to the jury about this process of interpretation. This witness apparently is an Italian speaking person; is that correct?

Mr. Baxter: Yes, sir.

The Court: The interpreter will listen to the question of the lawyer which, of course, will be in English. The proceedings here must be in English. The interpreter will repeat the question to the witness, in this instance, the plaintiff, in his own language, in the language of the plaintiff. The plaintiff will answer in Italian and the interpreter again will translate it.

I say that in order that there may be no misunderstanding of the way it is done.

How many of you have served as a juror in this court? Then I want to add one more brief statement. We have two lawyers. Let us say one is A and one is B. A asks a question. B may believe it's an improper question. For example, he may claim it's not relevant. He says, "I object." It's the duty of the Court then to determine whether or not it is proper to have the question answered. You are

(11)

the determiners of the fact, but the judge is burdened with the requirement that he decide which facts are admissible. I am saying that so it will facilitate your hearing.

You may proceed, Mr. Baxter.

Giovanni Gentile—for Plaintiff—Direct

Direct examination by Mr. Baxter:

Q. Giovanni Gentile, what is your occupation? A. Longshoreman.

Q. On May 22, 1970, were you a longshoreman? A. Yes.

Q. How long have you been a longshoreman as of today? A. Ten and a half years.

Q. Would you describe to the Judge and jury what your duties as a longshoreman are?

The Court: Generally and briefly.

A. You want to know what I have to do on a ship?

Q. Yes. A. I'm down in the hatch, I'm working there, discharging cargo, unloading pallets, loading pallets.

Q. Is your work confined to the holds, working in the hold? A. Always down in the hold.

Q. Is the hold the same thing as being down in the
(12)

hatch? A. Yes, working in a hatch.

Q. Are there different levels in different ships in different hatches? A. Yes. The smallest ships have two, the large ships have three, four, five.

Q. On May 22, 1970, were you employed by Northeast Stevedoring Company that day? A. Yes.

Q. Where did you report for work on the day of May 22, 1970? A. At 39th Street.

Q. Is that the 39th Street pier in Brooklyn? A. Yes.

Q. Is that your regular pier? A. Yes.

Q. Where you perform your work usually? A. Yes.

Q. Was there a vessel tied up at the pier that day? A. Yes.

Q. Did you work aboard the vessel that day? A. Yes.

Giovanni Gentile—for Plaintiff—Direct

Q. What time did you go aboard the vessel on May 22, 1970?

(13)

The Court: Before you get to that, do you want to elicit what vessel it was?

Q. Do you remember the name of the vessel? A. I do not remember the name of the ship. There are a lot of ships there.

Q. The vessel that you went aboard, what time did you go aboard it on that day? A. In the morning at 8:00 o'clock.

Q. Did you work from 8:00 o'clock until noon? A. Yes.

Q. What hatch did you work in? A. In the Hatch No. 3.

Q. Between noon and 1:00 o'clock did you have your luncheon break? A. Yes, sir.

Q. What were you doing in the morning before your luncheon break, loading or discharging? A. Loading.

Q. What were you loading? A. Everything mixed, cases, cartons.

Q. How was this mixed cargo being brought aboard the vessel? A. On pallets.

Q. What is a pallet?

(14)

A. It's made out of wood. It's a piece of wood.

Q. Is the cargo stowed on the pallet and then brought aboard the vessel? A. Yes.

Q. What picks up the pallet and brings it aboard the vessel? A. The winch.

Q. Does the winch have bridles that are attached to the pallet? A. Yes.

Q. By winch, do you mean the ship's derrick that brings it up—

Giovanni Gentile—for Plaintiff—Direct

The Court: Would you care to elicit for the benefit of Court and jury what bridles are before you go on?

Mr. Baxter: All right. I was going to go after the derrick first.

Q. Will you explain what you mean by bridles? A. There are four wires attached to a piece of metal.

Q. This piece of metal, is that, in turn, attached to the end of the pallet? A. Yes, there is a bar which goes inside of it.

Q. One at each end? A. One at each end.

(15)

Q. Is a winch the ship's derrick? A. Yes.

Q. When you mention winch, do you mean the physical winch itself or the whole totality of the derrick?

The Court: Before we go on, I don't believe there's any claim here about anything lacking in the winch or in its operation.

Mr. Baxter: I am merely trying to explain to the jury what he understands by winch, your Honor.

The Court: I don't know whether they need to, counsellor. I think they do already, however.

Mr. Baxter: All right.

Q. After your return from lunch, what did you do?
A. We went back to the same place.

Q. What did you do when you went back to the same place, No. 3 hatch? A. The same work.

Q. Did there come a time when separation paper was laid?

Mr. Ingram: Objection.

Giovanni Gentile—for Plaintiff—Direct

The Court: Yes, unless there's some knowledge. You haven't shown any foundation to the laying of paper yet.

(16) The objection is sustained. If you want the answer out, counsellor, you will have to make a motion to strike it. If you want to let it stand, all right.

Q. When you came back, did you see any separation paper being laid?

The Court: Yes or no.

A. No.

Q. At any time in the afternoon did you personally lay any separation paper? A. I had put it down on the other side and my co-workers put it down on that side.

The Court: Wait a minute. There's no foundation for the latter part of the statement.

Counsel may move to strike the latter part of it out.

Mr. Ingram: I move to strike the other part of the answer.

The Court: Granted.

Q. You put it down on what side? A. On the right side.

The Court: Right side of what?

The Witness: Of the ship. The vessel was moored this way with its bow.

Q. Was it offshore or inshore when you say right side?
(17)

Mr. Ingram: Objection.

A. The inshore side.

Giovanni Gentile—for Plaintiff—Direct

Q. Did you see at any time separation paper in the offshore side? A. Yes, but I wasn't the only one that put paper down. Every member of the gang had put paper down, a piece here and a piece there.

Q. Was there anyone else in the hatch working with you that was not a member of your gang? A. No, they were all co-workers.

Q. How were they divided, half and half, half offshore, half inshore?

Mr. Ingram: Objection.

The Court: I don't know that that makes any difference.

Mr. Baxter: Just places the men in the hold, your Honor.

The Court: Objection sustained.

Q. Where were the different men? First of all, how many men were in the hatch with you? A. Eight.

Q. Where were you when you laid the paper, offshore or inshore? A. In the middle of the square.

(18)

Q. Were you working with a partner? A. Yes.

Q. Was he laying the paper with you? A. Yes.

Q. Did you see any other co-workers laying paper? A. They put it down, but the others that were behind me, I did not see them.

Q. Did there come a time when a certain area was covered with separation paper?

Mr. Ingram: Objection.

A. Yes.

Giovanni Gentile—for Plaintiff—Direct

The Court: sustained. It's indefinite. It might be anywhere.

Mr. Baxter: I am going to ask the next question, where was the area, your Honor. I am having difficulty enough going through the interpreter.

The Court: Don't complain, counsellor. You have an interpreter.

Sustained in that form.

Q. Did there come a time when the square of the hatch was covered with separation paper? A. Yes.

Q. Will you describe what that separation paper looked like?

(19)

A. A brownish color, somewhat light.

Q. Do you know what the purpose of the separation paper is? A. To divide the ports so that they be discharged in the port of Curacao, Aruba. It separates the cargo.

Q. At what time did you lay your share of the separation paper? A. 2:30, 3:00 o'clock.

Q. At what time was all the separation paper in the square of the hatch completely laid? A. After about five minutes.

The Court: After when?

The Witness: After about five minutes.

Q. Thereafter was cargo loaded and placed, stowed on top of the separation paper? A. Yes.

The Court: I want to ask a question simply as a matter of clarity at this point.

Giovanni Gentile—for Plaintiff—Direct

Where did you lay separation paper?

The Witness: On top of all the general cargo. There were openings underneath.

The Court: Was it all over the square of the hatch?

(20)

The Witness: Yes, sir.

The Court: Anything beyond the square of the hatch?

The Witness: No, sir.

Q. When the cargo was being loaded thereafter, did something happen to you? A. Yes.

Q. What happened? A. While we were working—while we were taking the cargo in the back to level off the cargo, the paper went through and I went into a hole, an opening with my leg.

Q. Which leg? A. The left one.

The Court: Where was this where you say that happened? Where on the deck do you say this happened?

The Witness: In the middle of the square, your Honor.

The Court: It was in the middle of the square of the hatch?

The Witness: Yes. We were working both sides, taking the cargo, putting it on one side and the others were putting it on the other side.

The Court: Anything else, counsellor?

Q. Thereafter what did you do after your left foot
(21)

went into this space—

Giovanni Gentile—for Plaintiff—Cross

The Court: Don't get into damage questions.

Mr. Baxter: That's all I have at this point, your Honor.

The Court: All right. Cross-examination.

Cross examination by Mr. Ingram:

Q. Mr. Gentile, do you know the name of the ship that you were injured on? A. I only remember something like LeDawn.

The Interpreter: That's phonetic, Judge.

A. (Continuing) S. S. LeDawn.

Q. What color was the ship that you were hurt on?

Mr. Baxter: Objection, your Honor. What is the relevancy of the color of the ship?

The Court: It's a question of credibility on identification, I suppose. Overruled. It's taken only for that purpose.

A. Black. That is to say the outside part of the ship, black.

Q. Was the ship all black? A. On board the vessel the masts are painted this color, the cabins (indicating).

Mr. Ingram: Indicating what, please?

(22)

The Interpreter: The wall, counsellor.

The Court: Light green?

The Witness: Also white.

The Court: Where was the black paint, on the outside?

Giovanni Gentile—for Plaintiff—Cross

The Witness: Outside of the vessel it was black, inside it's white, blue, all colors.

Q. How many hatches does the ship have? A. Three.

Q. Mr. Gentile, was this the first day that you worked on this ship? A. I don't remember because we were finishing up the ship. On that day the ship was finished.

Q. Did you work the day before on that ship? A. We worked on another ship, not that one.

Q. How many ships were at 39th Street pier on May 22, 1970? A. That day I remember one.

Q. Just one ship at the pier? A. On that day I only remember one.

Q. How many shipping companies use the 39th Street pier?

Mr. Baxter: Objection, your Honor.

The Court: Sustained.

(23)

Don't get excited.

Q. Mr. Gentile, what cargo were you working on May 22? What type of cargo? A. General cargo.

Q. What do you mean by "general cargo"? A. A case, a carton, a piece of iron.

Q. What type of cargo were you working on May 22, 1970?

Mr. Baxter: Objection. Already asked and answered, your Honor; general cargo.

The Court: Sustained.

Q. Were the cargo in different sized cases and crates?

Mr. Baxter: Objection, your Honor; already asked and answered.

Giovanni Gentile—for Plaintiff—Cross

The Court: I don't recall it. I will let him answer.

Mr. Baxter: He said different sizes.

The Court: I will let him answer in case it hasn't been answered.

A. Ten inches, a meter, two meters, three meters.

Q. How did this cargo come down? A. With the pallets.

Q. Was it your job to take the cargo off the

(24)

pallets? A. Yes.

Q. Where would you put the cases that you took off the pallets?

The Court: Wait a minute. I don't understand that one. I don't think it's clear.

Q. Mr. Gentile, you told us you take the cases off the pallets.

The Court: Yes, he said that.

Q. Where did you put those cases that you took off the pallets? A. All over the hatch.

Q. Were you leaving holes or spaces between cases? A. Yes.

Q. Why were you leaving these spaces between the cases? A. Because another case did not fit in there.

Q. Is that a typical loading arrangement of general cargo on cargo ships that come to the Port of New York?

Mr. Baxter: Objection, your Honor. It calls for a conclusion on the witness' part beyond his capacity.

The Court: It may call for his conclusion—

Mr. Baxter: It calls for expert opinion.

Giovanni Gentile—for Plaintiff—Cross

The Court: I don't think there's any qualifi-

(25)

cation presumed. I will have to sustain the objection.

Q. Mr. Gentile, how long have you worked as a holdman on the waterfront, City of New York? A. Ten and a half years.

Q. How many general cargo ships have you loaded in those ten and a half years, approximately? A. Who can remember. I don't count them.

Q. Was it more than a thousand possibly? A. I can't say.

Q. Was it more than 500 in ten years? A. I can't tell you.

Q. Have you ever noticed space in between general cargo when loading a ship—

Mr. Baxter: Objection, your Honor—

Q. —in the Port of New York?

Mr. Baxter: Objection, your Honor.

The Court: Overruled.

A. No.

Q. You have never noticed space between cargo? A. When there was an empty space, if we got a smaller case, we would put it in between.

The Court: You just said a little while ago that sometimes the paper was put over when the cartons didn't match; isn't that right? Didn't you say that?

(26)

The Witness: Yes, but we put down the paper. Whether there is an opening, a space or not, we have

Giovanni Gentile—for Plaintiff—Cross

to put the paper down because it goes to another port.

Q. Mr. Gentile, do you recall testifying at our office, that is, the office of Burlingham, Underwood & Lord, on November 15, 1972?

Mr. Baxter: We concede that the deposition was taken on that date, your Honor.

The Court: Do you have a copy of the deposition?

Mr. Ingram: A copy of the deposition was filed with the Court on December 13, 1972.

The Court: I don't have it.

Mr. Ingram: I understand there is a problem with the clerk's office.

The Court: The question is: does either counsel have a copy for me?

Mr. Baxter: I only have one for myself, your Honor.

The Court: Are you going to read much of it?

Mr. Ingram: About half a page, your Honor.

The Court: State the page and line in each case.

Q. Page 10, line 15:

(27)

"Q. Were you leaving holes or spaces between the cargo? A. Whenever there was a hole on top, where we could, yes. Underneath, if there was holes, underneath there, we couldn't see it, naturally.

"Q. But I mean, when you first were putting in these different size pieces of cargo, were there any spaces left between the pieces? A. You always have some spaces. We were just finishing up."

Giovanni Gentile—for Plaintiff—Cross

Line 25——

Mr. Baxter: What is the outstanding question? He is merely reading. There is no question.

The Court: He can read. There is nothing wrong with that.

Mr. Baxter: He can only read it if he is using it for impeachment purposes. He can't——

The Court: Who said so?

Mr. Baxter: Unless he is showing he is using it for impeachment purposes.

The Court: Testimony was taken. One of the possible uses of it is to read it. It may be he should wait until the defendant's case. That may be.

(28) Mr. Baxter: The Second Circuit told us as long as the man is present in court, you can only use it for impeachment. That was the Davis case.

The Court: On a deposition of a party?

Mr. Baxter: Yes, sir.

The Court: I don't believe that's correct.

Mr. Baxter: As long as he's here subject to cross-examination. There is no question outstanding.

The Court: What is the citation of the Davis case?

Mr. Baxter: I don't know the exact citation, your Honor.

The Court: What good is your reference to it, then? I am not going to ask my clerk to search the decisions of the Second Circuit if you don't give me the citation.

Can you get it from your office?

Mr. Baxter: I can try to get it after recess.

The Court: We will have a recess at this point.

(Recess.)

(In the robing room.)

Giovanni Gentile—for Plaintiff—Cross

The Court: Counsel stated in his objection to a question as to Mr. Ingram's reading from the deposition of the plaintiff that there was some case known as Davis which prohibited such procedure.

Now, in the present case the plaintiff has

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testified. He is on cross-examination.

I have found no evidence, no authority in this case which has been referred to me, the case of Berke against Lehigh Marine Disposal Corporation, Second Circuit, 1970, reported in 435 F. 2d 1073 which supports such a contention.

Here in the Berke case, Berke, the plaintiff, did not testify and there was an attempt made apparently to read his statement. The court in item two of the opinion on which headnote two is based—I will table what I believe to be the key sentence in that paragraph. "Counsel offered no competent testimony to prove that Berke was incompetent to testify at the trial and without such a foundation Berke's deposition was inadmissible," citing some rule. You can look at it.

My ruling is that the question may be asked.

Mr. Baxter: My objection as put on the record, your Honor, was on a different basis.

The plaintiff was on the stand and defendant's counsel was reading from the deposition without trying to impeach him with that, asking him——

The Court: That is permissible.

Mr. Baxter: I say it isn't, your Honor.

The Court: The reference you gave hasn't any indication of such ruling.

Giovanni Gentile—for Plaintiff—Cross

(30)

Mr. Baxter: The ruling there in the Berke case is that a deposition cannot be used when the man is available or has not been shown to be outside——

The Court: I say there's nothing there that supports your contention, and I am ruling that it is admissible. That's it.

I am not going to discuss it further.

(In open court; jury present.)

The Court: The objection to the former question is overruled.

You may repeat the question.

Mr. Ingram: Thank you, your Honor.

By Mr. Ingram:

Q. Page 10, I was up to approximately line 20. I will start at line 20.

“Q. But I mean, when you first were putting in these different size pieces of cargo, were there any spaces left between the pieces? A. You always have some spaces. We were just finishing up.”

The Court: Did you so testify?

Mr. Baxter: We concede he did, your Honor.

The Court: Hasn't the witness answered?

The Interpreter: No, sir.

(31)

The Court: He is entitled to an answer.

The Witness: Yes.

Q. Reading again from page 10, line 25 and going over to page 11:

“Q. You tell me that you always have some spaces because the cargo is different sizes and shapes, is that

Giovanni Gentile—for Plaintiff—Cross

right? A. Yes. You always have some space. You can't close up all the spaces."

Do you recall testifying to that? A. Yes.

Q. How wide was the separation paper that you put down, Mr. Gentile? A. About so big (indicating.) That's in width.

Mr. Ingram: Approximately three feet, Mr. Baxter?

Mr. Baxter: I can't see.

The Court: Have him put his hands up again.

Mr. Baxter: Two and a half feet, three feet.

The Court: Two and a half to three.

Mr. Ingram: So stipulated.

Q. How long was the separation paper? A. Five, six, seven feet. We would cut it off, whatever we needed.

(32)

Q. What did you use to cut the paper off with? A. With our hands.

Q. Who was your partner on May 22, 1970, Mr. Gentile? A. I do not remember his name. He hasn't been in our gang for over three years. It's a long time ago.

Q. Did you put separation paper over spaces in cargo? A. Yes.

Q. Is that a normal practice on the 39th Street pier?

Mr. Baxter: Objection to the question, your Honor.

The Court: Has it been elicited that he operated at that point? I don't know whether it has or not, counsellor.

Mr. Baxter: On direct testimony he testified that

Giovanni Gentile—for Plaintiff—Cross

the regular pier was the 39th Street pier. He is asking regularly what he did.

The Court: I will sustain the objection.

Reframe the question.

Mr. Ingram: I will withdraw the question.

Q. Mr. Gentile, is it your regular practice at 39th Street pier when putting down separation paper to cover over spaces in general cargo?

(33)

A. Yes.

The Court: Let me ask a question there.

You should have asked your question a little differently.

Was that your practice before this accident?

The Witness: Yes, sir.

Q. How big was the hole in the separation paper that you made, Mr. Gentile?

The Court: Wait a minute, now. I don't understand that question.

Sustained as to form. The hole made by his foot—the allegation that the foot went through it or how much was the hole that was covered? It's not clear.

Q. Mr. Gentile, how big was the hole made by your left foot in the paper?

Mr. Baxter: Objection, your Honor.

Mr. Ingram: I will rephrase the question, your Honor. I'm sorry.

The Court: Objection withdrawn now?

Giovanni Gentile—for Plaintiff—Cross

Mr. Baxter: Yes, as long as it's limited to the paper.

Q. Mr. Gentile, how big was the hole made in the separation paper by your left foot? A. Nine inches, ten inches.

(34)

Q. How far down did your left leg go into that hole in the separation paper, Mr. Gentile?

The Court: The foot or the leg? I don't want to get technical here. Accuracy is important.

Do you mean the foot or the leg now?

Mr. Ingram: The foot.

A. It went about three feet down, but I held on.

The Court: One leg only?

The Witness: Yes, only one leg, sir.

Q. Mr. Gentile, where were you born? A. In Italy.

Q. When did you come to the United States? A. 1963.

Q. Are you still a citizen of Italy? A. No.

Q. Are you a citizen of the United States? A. Yes.

Q. When did you become a citizen of the United States?
A. 1969.

Q. Where were you sworn in as a citizen? A. Fulton Street, Brooklyn.

Q. What date? A. Around June of '69.

(35)

Q. What building at Fulton Street were you sworn in?
A. Alongside of the court, Duane Street. That's the name of the street near the building.

Dominick Lepore—for Plaintiff—Direct

Mr. Ingram: I have no further questions of the plaintiff.

The Court: Any redirect?

Mr. Baxter: No, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Next witness.

Mr. Baxter: I call Mr. Lepore.

The Court: Does he need an interpreter?

Mr. Baxter: No, sir. The next witness will.

The Court: Then the interpreter will remain for the next witness.

The Interpreter: Yes, your Honor.

DOMINICK LEPORE, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Baxter:

Q. Mr. Lepore, by whom are you employed? A. Northeast Terminal Stevedore.

The Court: By whom, sir?

(36)

The Witness: Northeast Terminal.

Q. On May 22, 1970, were you employed by them? A. Yes, sir.

Q. What was your job? A. Hatch boss.

Q. Will you describe what the duties of a hatch boss are? A. I'm in charge of the 18 men.

The Court: In charge of what, sir?

Dominick Lepore—for Plaintiff—Direct

The Witness: 18 men.

Q. How are the 18 men divided? A. Deckmen, holdmen and dockmen.

Q. On May 22, 1970, was Giovanni Gentile a member of your gang? A. Yes, sir.

Q. One of the 18 men? A. Yes.

Q. Do you recall where your gang worked on May 22, 1970? A. Yes.

Q. Where is that? A. No. 3 Hatch.

Q. What pier? A. 39th Street.

(37)

Q. Where is that, Brooklyn? A. Brooklyn.

Q. Do you recall the name of the ship that you worked that day? A. Ammon.

Q. What time did you go aboard that day? A. 8:00 o'clock in the morning.

Q. Were you loading or discharging? A. Loading.

Q. What were you loading in No. 3 Hatch? A. General cargo.

Q. After lunch on May 22, 1970, did you witness an accident? A. Yes.

Q. Will you tell the Court and jury what you saw?
A. Well, I saw Giovanni Gentile fall between the cases.

The Court: Where were you?

The Witness: I was right there.

The Court: How far away?

The Witness: Near the hatch.

The Court: How many feet away?

The Witness: One foot.

The Court: What were you doing?

Dominick Lepore—for Plaintiff—Direct

(38)

The Witness: I'm looking.

The Court: Looking at what?

The Witness: Looking at the men work.

Q. Your job is supervising these men? A. Yes.

Q. What was the condition of the No. 3 square of the hatch at the time you were looking— A. There was cargo over.

Q. Were you finishing off? A. We were finishing off.

Q. Does that mean you were about to complete it and put the hatch boards and beams in?

The Court: Suppose you left him testify.

Q. You were finishing off.

What does that mean? A. We were finishing the hatch.

The Court: You were doing what?

The Witness: Finishing the hatch.

The Court: What do you mean?

The Witness: The cargo.

The Court: What were you doing?

The Witness: Finishing the ship, sir.

The Court: What were you particularly doing?

Do you understand the question? Otherwise we will have to

(39)

get an interpreter here.

The Witness: I understand the question.

The Court: What were you doing?

The Witness: I was standing right there looking.

The Court: What were the men doing?

The Witness: Loading.

The Court: Loading?

The Witness: Loading cargo.

Dominick Lepore—for Plaintiff—Direct

The Court: Go Ahead.

Q. Were you supervising the loading of this cargo? A. Yes. A. Yes.

Q. After you——

The Court: Wait a minute. You'd better elaborate more on what he says he saw.

Mr. Baxter: All right.

The Court: And where it was.

Mr. Baxter: Yes, sir.

Q. This is No. 3 Hatch and the men are working in the square of the hatch? A. Yes.

Q. Where are you standing? A. Right near the hatch.

Q. On the main deck? A. On deck, sir.

(40)

Q. On the main deck is there a hatch coaming between you and the hatch itself? A. Yes, sir. There's the coaming right over here (indicating).

Q. How high is the hatch coaming, roughly? A. About four feet; three and a half, four feet.

The Court: Were you up on the main deck?

The Witness: Yes.

The Court: This place where these men were working was down below?

The Witness: No, it was right almost about four feet down from the coaming.

The Court: It's in what is called the 'tween decks; is that right?

The Witness: Upper 'tween deck.

Dominick Lepore—for Plaintiff—Direct

The Court: How low is——

The Witness: Four feet.

The Court: Wait until I finish my question.

How much below the coaming?

The Witness: Four feet, sir.

Q. They were in the process of finishing it? A. Yes.

Q. Were they standing on cargo or the upper 'tween deck?

(41)

A. Standing on cargo.

Q. How far above the upper 'tween deck were they standing?

The Court: Wait a minute.

Read that question.

(Question read.)

Q. How far above the upper 'tween deck were they standing on the cargo? They are finishing off the hatch.

A. Finishing off the hatch.

The Court: Don't elaborate your question by making a statement.

Read that once more. I don't understand it, I must say.

(Question read.)

The Court: The cargo was on the 'tween deck, was it?

The Witness: Yes.

The Court: What is the question?

Dominick Lepore—for Plaintiff—Direct

Q. Was there other cargo on top of that cargo? A. There was the cargo in the 'tween deck.

Q. Was there other cargo on top of the cargo on the 'tween deck? Was there more than one tier? A. Yes, sir.

Q. All right.

(42)

How many tiers up from the upper 'tween deck was the cargo?

The Court: If you know.

A. It was from about the coaming to—about four feet.

The Court: He is asking you I believe, whether there was more than one tier.

The Witness: Yes, more than one tier.

The Court: Repeat your question.

Q. How far below the coaming were the heads of the men— A. In—

Q. Listen to the question, please.

How far below the coaming were the heads of the men that were working in the No. 3 square? A. Maybe the heads off the coaming.

Q. Am I correct that your testimony is that if this is the coaming—

The Court: Wait. You are not going to get that into evidence anyway. That can't be repeated in the record. You will have to try to elicit by words.

Q. As you stood on the main deck looking over the coaming into the square of the hatch, could you see the men? A. Yes, sir.

Dominick Lepore—for Plaintiff—Direct

(43)

Q. How far was Mr. Gentile from you as you looked at him? A. He was—deep down?

Q. How far? A. About five, six feet.

The Court: Five or six feet away?

The Witness: Yes, from me.

Q. How far down? A. He was about—his head was over the coaming.

The Court: What's that?

The Witness: The head was over the coaming.

The Court: His head was?

The Witness: Yes.

Q. Was his head on an even line with yours? A. Maybe. I don't remember exactly. I know——

The Court: Wait a minute, counsellor. You have trouble with this man and his English. There's no doubt about it. I think it would be appropriate if you would get the interpreter back here and then we can get along faster with the interpreter.

The Witness: Sir, I——

The Court: You just keep quiet until you are asked a question.

(Pause.)

(44)

The Court: We will now continue by means of an interpreter.

Q. Don't answer the question until it's been interpreted in Italian to you and you must put your answer in Italian.

Dominick Lepore—for Plaintiff—Direct

Please don't use English. A. The fact is, I don't know that much Italian either.

The Court: Never mind.

Q. Were you standing on the main deck? A. (Through the interpreter) Yes.

Q. You were standing about a foot from the hatch coaming? A. Yes.

Q. And the hatch coaming is three and a half to four feet high from the deck? A. Yes.

Q. When you looked into the No. 3 square of the hatch you could see Mr Giovanni Gentile about five or six feet away—

The Court: Don't lead the man.

Mr Baxter: It's already in evidence, your Honor.

The Court: I don't care whether it is or it's not. This is perhaps a more accurate translation at least

(45)

of the testimony because we have the interpreter.

Q. When you looked into the square of No. 3 Hatch, how far was Mr. Gentile away from you? A. Five or six feet.

Q. Where was his head in relation to your head? A. I don't know.

Q. Was his head below your head, the level, or was it above or where was it? A. Yes, his head was further down.

Q. How much further down than your head?

The Court: He said already he didn't know, I think.

Dominick Lepore—for Plaintiff—Direct

Ask it again.

A. I didn't measure.

Q. Can you estimate it? A. He was three or four feet down.

Q. All right.

Would you tell the Court and jury what you saw?

A. I saw that he fell between the cases.

The Court: He fell?

The Witness: With his foot in between the cases.

The Court: Did you see his foot or leg?

The Witness: Yes.

The Court: All right.

(46)

Go on, counsellor.

Q. Did you supervise the laying of the separation paper?

Mr. Ingram: Objection. There's been no mention of separation paper by this witness, your Honor.

Q. Was any separation paper laid at any time in No. 3 square of the hatch? A. Yes.

Q. Did Mr. Giovanni Gentile's leg and foot go through the separation paper?

Mr. Ingram: Objection; leading.

The Court: What is the objection?

Mr. Ingram: Leading the witness.

The Court: Yes, I suppose it is.

You may ask what he saw happen.

Mr. Ingram: Your Honor—

The Court: Sustained in that form.

Dominick Lepore—for Plaintiff—Cross

Q. Will you describe in detail what you saw regarding Mr. Giovanni Gentile's accident? A. The paper was there and he went through the paper with his foot down. That's all.

Mr. Baxter: I have no further question your Honor.

The Court: Cross-examination

(47)

Cross examination by Mr. Ingram:

Q. Mr. Lepore, how long have you worked as a long-shoreman? A. Since 1936.

Q. How long have you been a hatch boss? A. Ten years.

Q. How long have you worked for Northeast Marine Terminal as a hatch boss? A. From the time that they opened up the dock.

The Court: Are you still employed by that company?

The Witness: Yes, sir.

Q. What color was the S. S. Ammon? A. All the ships are black.

The Court: No. You may move to strike that.

Mr. Ingram: I move to strike that answer as not being responsive.

The Court: Yes.

Q. I asked what color was the Ammon. A. I believe that it was black.

Q. All black? A. The bridge is white.

Q. Any other colors?

Dominick Lepore—for Plaintiff—Cross

(48)

A. Yes, the mast is beige.

Q. Was there any green on the ship? A. I don't remember.

Q. What color was the separation paper, Mr. Lepore? I am asking, Mr. Lepore, the color of the separation paper used on board the Ammon on May 22, 1970.

Mr. Baxter: May we have a direction that they go through the interpreter rather than have English, your Honor?

The Court: Yes. I have instructed him before. I instruct you again. Will you please put the statement to the witness.

A. At times it's gray and at times it's brown, coffee.

Q. Again I ask, Mr. Lepore, on May 22, 1970, on the Ammon in Hatch No. 3 what color was the separation paper? A. It's as I told you before. It depends. Some of the ships it is gray and some of the ships it is brown.

The Court: You may move to strike that, counsellor.

Mr. Ingram: Move to strike that again as not being responsive.

The Court: Granted.

If you can't tell which color it was, don't
(49) attempt to state anything.

Q. How wide—

Mr. Baxter: We don't have any answer to your question.

Dominick Lepore—for Plaintiff—Cross

The Court: I didn't ask a question. The answer was stricken. I didn't ask any question. I made a direction to him.

Q. Mr. Lepore, how wide was the separation paper used on the Ammon on May 22, 1970 in the No. 3 Hatch, if you know? A. Three and a half feet, four feet.

Q. How long were the strips of separation paper used in the No. 3 Hatch of the Ammon on May 22, 1970? A. I do not remember.

Q. Was this the first day that your gang was working on the Ammon, that is, May 22, 1970? A. I don't remember.

Q. What were you doing on May 22, 1970, in the No. 3 Hatch, loading or discharging or both? A. Loading.

Q. What type of cargo were you loading? A. General cargo.

Q. What do you mean by "general cargo"? A. Cartons, boxes, everything.

(50)

Q. Are they all different sizes or are they uniform size? A. All mixed.

Q. When loading general cargo, do you leave spaces between the cargo? A. No.

Q. Are you telling us that you make it a wall to wall stow? A. I tell them to make a floor so that we work floor by floor to cover it up. Otherwise the other cargo can't come down.

Q. On May 22, 1970, did you make a wall to wall stow by laying a floor over each tier of cargo? A. Floor by floor, yes.

Q. So there was no space between the cargo and the

Dominick Lepore—for Plaintiff—Cross

No. 3 Hatch on the Ammon on May 22, 1970; is that right? A. I didn't see any.

Q. Was it your order to the men in the gang to put down the separation paper? A. Yes.

Q. Where did you put the separation paper? A. All over the hatch, all over the cargo.

The Court: Was it on the square of the hatch?

The Witness: Yes, sir.

(51)

Q. What was Mr. Gentile doing when you saw him get hurt? A. He was working.

The Court: What was he doing?

The Witness: The draft had come down. They had taken off the bridles and they were working.

Q. What type of work was Mr. Gentile doing? A. Moving the cases, stowing the cases in place.

Q. Was he working forward, was he working aft, was he working offshore, inshore? What was he doing? A. I did not see that.

Q. You told us you were only about four or five feet away and you were looking directly at him. You didn't see what he was doing? A. I saw him working, but I didn't see whether he was going forward, backward, or to the side.

Q. How many men were in that No. 3 Hatch that time, Mr. Lepore? A. I don't remember. Sometimes we have ten, sometimes we have eight, but we always have eight.

Q. You don't know how many men there were in the No. 3 'tween deck at that time, do you? A. No, I don't remember.

Dominick Lepore—for Plaintiff—Cross

Q. You were looking just at Mr. Gentile; is that
(52)

right? A. No, I was looking at everybody.

Q. But you didn't see what Mr. Gentile was doing at the time you say he got hurt? A. He was working.

Q. How do you know it was the Ammon at the 39th Street pier on May 22, 1970?

Mr. Baxter: Objection to the form, your Honor. It calls for the operation of his mind.

The Court: I am going to sustain the objection in that form.

Q. Mr. Lepore, do you have any documents or papers that indicated that you worked on the Ammon on the 39th Street pier on May 22, 1970? A. The company has the records.

The Court: What company?

The Witness: Northeast.

Mr. Ingram: I have no further questions of this witness.

The Court: I want to ask a question for clarity.

After you say you saw something happen to Mr. Gentile, did you go down to the floor of the hatch on which you had seen him?

The Witness: No, I did not go down.

The Court: You never went down?

The Witness: No. I said to him, "Come up on top."

The Court: All right.

Any further questions?

Mr. Baxter: No, sir.

Vincenzo Gentile—for Plaintiff—Direct

The Court: Very well.

You are excused.

(Witness excused.)

Mr. Baxter: Mr. Vincenzo Gentile.

VINCENZO GENTILE, called as a witness on behalf of the plaintiff, being first duly sworn, testified through the Italian interpreter as follows:

Direct examination by Mr. Baxter:

Q. Mr. Gentile, are you the brother of Giovanni Gentile?

A. Yes.

Q. Mr. Gentile, you must wait until my questions are translated to you in Italian and you must answer in Italian, and we will get the interpreter's works in English.

A. Yes.

Q. What is your occupation? A. Deckman.

(54)

Q. Are you a longshoreman? A. Yes.

Q. How long have you been a longshoreman? A. 24 years.

Q. On May 22, 1970, were you a longshoreman? A. Yes.

Q. For whom did you work? A. For Northeast.

Q. Was your brother in your gang? A. Yes.

Q. Who was your hatch boss? A. Dominick Lepore.

Q. That was the gentleman that preceded you, as far as you know? A. Yes.

Q. What time did you start work on May 22, 1970? A. 8:00 o'clock.

Q. At what pier did you start your work? A. 39th Street.

Vincenzo Gentile—for Plaintiff—Direct

Q. Is that in Brooklyn? A. Yes.

Q. Do you remember the name of the vessel you worked that day? A. No.

(55)

Q. Do you remember what hatch you worked? A. Hatch No. 3.

Q. What is your job as a deckman? A. I work with the winches, taking the cargo and bringing it into the ship.

Q. On May 22, 1970 were you loading or discharging? A. Loading.

Q. What were you loading? A. General cargo.

Q. By what means was the cargo brought aboard the vessel? A. On pallets.

Q. Did there come a time in the afternoon when you saw something happen to Mr. Gentile, your brother? A. Yes.

Q. What did you see happen? A. While I was bringing the draft down into the hatch I looked down and I saw him. He had fallen with his foot in the hole.

Q. Where were you at the time you saw this? A. On deck, while I was working the winches.

Q. Is the controls for the winches above the main deck? A. Yes.

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Q. Are the controls for the winches above the main deck? A. Yes.

Q. Are they on a winch platform? A. Yes, it's a steel platform.

Q. How far above the main deck is this steel platform? A. About eight feet.

Q. And about how far, to your best estimate, was Mr. Gentile from you when you saw him have his accident?

Vincenzo Gentile—for Plaintiff—Cross

The Court: Up, down or sideways?

A. I don't understand your question. You mean when I looked at him?

Q. When you looked down at him, how far was he from you? A. About 12 or 13 feet.

Mr. Baxter: I have no further questions.

The Court: Cross-examination.

Cross examination by Mr. Ingram:

Q. Mr. Gentile, where do you reside? A. 79 Bay Terrace, Staten Island.

The Court: May I suggest, counsellor, that the principal impact of this I suppose is to show what ship it

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was?

Mr. Ingram: Yes, sir.

The Court: As far as what happened is concerned, it may or may not have any bearing. I don't know.

Q. Mr. Gentile, what ship were you working on on May 22, 1970? A. A Dutch ship.

Q. What was the name of the Dutch ship? A. I have forgotten.

Q. What color was the ship that you worked on on May 22, 1970, at the 39th Street pier? A. Black.

Q. Was it all black? A. Yes.

Q. How many hatches did the ship have? A. Three.

Q. Which way was the ship docked? A. With the bow out.

Vincenzo Gentile—for Plaintiff—Cross

Q. You mean that the bow of the ship was facing the stream, is that right, the river? A. Yes.

Q. Did you see your brother and any other members of the gang at No. 3 upper 'tween deck put down separation paper in that hatch on May 22, 1970?

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A. Yes.

Q. What time of day did they put the separation paper down? A. Around 2:00 o'clock; something like that.

Q. What color was the separation paper put down into No. 3 Hatch? A. It's different color. You have some brown and some gray.

Q. On May 22, 1970, what color was the separation paper that was put down in the 'tween deck of No. 3 Hatch? A. Brown.

Q. How wide was the separation paper? A. Four feet.

Q. How long were the strips of the separation paper? A. 12, 14 feet.

Q. Did you see the hole that your brother's foot made in the separation paper? A. Yes.

Q. Where did you see that hole from? A. When I saw him down there when he went down into it.

Q. Were you up on the winch platform? A. Yes.

Q. Was your brother in the after end of the hatch?

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A. Yes.

Q. Where was the winch platform located? A. There were two winches.

Q. You mean there was one winch platform forward of No. 3 Hatch and one winch platform aft of No. 3 hatch? A. Forward.

Vincenzo Gentile—for Plaintiff—Cross

Q. You were at the winch platform forward of No. 3 Hatch; is that right? A. Yes.

Q. And you say your brother fell into a hole or put his foot into a hole at the after end of No. 3 Hatch; is that right? A. Yes.

Q. How long is the No. 3 Hatch, approximately? A. About 20 feet, something like that.

Q. And you were seven feet up and 20 feet away from your brother; is that right? A. Yes.

The Court: How big was the square of the hatch, No. 3?

The Witness: About ten feet.

Q. Is that ten feet wide or ten feet long? A. Wide.

Q. And how long?

(60)

A. About 20 feet, 25 something like that.

Q. 20, 25 feet long, ten feet wide.

How big was the hole made in the separation paper, Mr. Gentile? A. Seven or eight inches.

Q. Did you yourself go into the 'tween deck? A. No.

Q. From your position on the winch platform at No. 3 forward eight feet above the main deck and approximately 20 feet from the forward end to the after end of No. 3 Hatch you could see a seven or eight inch hole in the separation paper; is that right? A. Yes.

Mr. Ingram: I have no further questions of this witness.

Mr. Baxter: No further questions.

The Court: You are excused.

(Witness excused.)

The Court: Any more witnesses?

Motions to Dismiss

Mr. Baxter: No, your Honor

The Court: Plaintiff rests?

Mr. Baxter: On the liability, yes, your Honor.

The Court: Very well.

I will excuse the jurors, and I think you may as

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well go to lunch and come back at 1:45. Please heed my instructions.

(Jury absent.)

The Court: Any motion, Mr. Ingram?

Mr. Ingram: Yes, your Honor.

At this time defendant moves to dismiss this action for failure to state a cause of action in that plaintiff did not know the name of the vessel on which he claims he was injured and, furthermore, there was no proof of negligence on the part of defendant, nor was there any proof of an unseaworthy condition.

Plaintiff in his own testimony testified that it was normal to have spaces between general cargo and that he himself put down separation paper on top of general cargo knowing that there were spaces underneath, and at this time defendant also moves to dismiss this case based on 100 percent contributory negligence on plaintiff's part.

The Court: Is that all? I don't say that it isn't enough.

Is that all of your motions?

Mr. Ingram: Defendant also moves to dismiss for failure to state a cause of action.

The Court: Let's take the first one.

As far as the name of the vessel is concerned,

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it isn't necessary to actually designate a name, and there

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was some circumstantial evidence. I will have to deny that motion.

What is the next motion?

Mr. Ingram: Your Honor, the complaint did set forth a vessel that he claims the accident did happen on.

The Court: Was that admitted?

Mr. Ingram: It was denied.

The Court: Then it's admitted, isn't it? There's no problem there.

Mr. Ingram: We denied the fact he was injured aboard the Ammon, which he alleged.

The Court: That is another question. However, in any event, I deny that motion on that ground.

The second one relates to something else. Will you specify again and elaborate if you can?

Mr. Ingram: Your Honor, defendant moves to dismiss upon plaintiff's failure to make out a cause of action against the defendant in that he alleges unseaworthiness and negligence, and he has not offered any proof that the vessel owner was negligent or the ship was unseaworthy. To the contrary, both he and his hatch boss indicated that it was normal to leave space between general cargo because of the size and nature of general cargo, and that it was normal to

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put down separation paper to separate ports, and that plaintiff himself laid separation paper over—

The Court: What is the thrust of this motion? Is it that there was no proof of any negligence or unseaworthiness? Is that so?

Mr. Ingram: Yes, your Honor.

The Court: I will let counsel reply to that. They you may reply.

Motions to Dismiss

Mr. Ingram: On that also, your Honor, if I may, Mr. Lepore, the hatch boss, said there was no space between the cargo. He testified there was no space between cargo.

The Court: Look, doesn't that amount to no more than this, counsellor, to the effect that some witnesses have said there was a space and some say there was not? It's in essence an issue of fact, I suppose.

I shall have to deny it on that sole ground at least, that is, as to the testimony.

What about the answer to this motion, Mr. Baxter?

Mr. Baxter: The motion that I just heard is for failure to state a cause of action.

We bring two actions, one in negligence and one in unseaworthiness.

The Court: Yes, yes, of course. He said there wasn't any shown.

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Mr. Baxter: There certainly has been.

The Court: All right. You are enthusiastic about it.

Will you please point out—

Mr. Baxter: Your Honor—

The Court: Will you listen to me a minute.

Will you state where there was any negligence on the part of the vessel?

Mr. Baxter: The negligence on the part of the vessel is—they have a non-delegable duty towards the plaintiff and any other seaman in that capacity.

Number two, plaintiff did not lay the separation paper over the hole into which he fell. That was his testimony.

The Court: So we distinguish one hole and another hole.

Mr. Baxter: Obviously.

Motions to Dismiss

Second of all, you have testimony as to what the plaintiff did, but it's not anything the plaintiff did that was the proximate cause of this accident. The proximate cause—

The Court: Is it negligence? You say yes on the part of the vessel and you say it's non-delegable to get rid of that obligation?

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Mr. Baxter: Yes.

The Court: Secondly, what do you say about unseaworthiness?

Mr. Baxter: The very fact that they didn't stow it properly constituted an unseaworthy condition.

The Court: Very well.

You may reply to that if you wish, counsellor.

Mr. Ingram: Yes, your Honor.

The Court: In other words, what he is saying is the ship didn't do anything wrong.

If what he says is true, that it's not possible to delegate these things—and keep in mind the history of sea matters, that to some extent the longshoremen do the work which was once done by the seaman—why are you right? Have you any cases, counsellor, that say it's solely the act of the longshoremen working for the stevedores?

Mr. Ingram: Yes, on the basis of Usner against Luckenbach. I have it in the requests to charge, your Honor.

The Court: Just give me the case that you say is controlling.

Mr. Ingram: Another case, your Honor, Nuzzo against Rederi. It's in the supplemental requests to charge that I gave you this morning.

The Court: Will you just tell me what the

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citation is so I can write it down now. Give me the citation.

Mr. Ingram: 304 F. 2d 506, Second Circuit, 1962.

The Court: What is the page again?

Mr. Ingram: 506, your Honor.

The Court: What was the other one?

Mr. Ingram: Uzner against Luckenbach.

The Court: Give me the citation.

Have you any citations on this?

Mr. Baxter: Well—

The Court: Answer me yes or no.

Mr. Baxter: Citations for what?

The Court: For the position you take, of course. That is what we are discussing.

Mr. Baxter: My position, your Honor, is strictly a question of fact.

The Court: What is the question of fact, to get down to that?

Mr. Baxter: The question of fact is what I thought your Honor was discussing with Mr. Ingram.

The Court: I am discussing law with your adversary now. You tell me it's fact. If it's fact, it's one thing. If the law is as counsel says, your case is out. Don't you understand me?

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Mr. Baxter: I know what he is saying. If you want me to discuss the law, I will be glad to.

The Court: I don't want a discussion, I want some citations, counsellor.

Do you have any citations?

Mr. Baxter: I have no citations.

Motion to Dismiss—Decision Reserved

The Court: All right. Then I shall examine these which your adversary cites.

If you come into court on a question, you ought to have some citations, if I may say so.

What is your other case, the number?

Mr. Ingram: 400 U. S. 562.

The Court: What you are saying is, if there's nothing where the situation arises, I take it, as a result of the act of the longshoreman or stevedore, there's no liability against the ship?

Mr. Ingram: That's correct, your Honor.

The Court: It's a simple question.

Did you have another motion?

Mr. Ingram: I also move to dismiss at this time based on plaintiff's contributory negligence in that he was 100 percent——

The Court: I can't dismiss it for that. I can't determine as a question of fact the amount of the contri-

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butory negligence. I will reserve on that.

Anything else?

Mr. Ingram: No further motions, your Honor.

The Court: All right.

Come back at 1:45.

(Luchon recess taken.)

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AFTERNOON SESSION

1:45 p.m.

(In open court, jury absent.)

The Court: I will now consider the motion somewhat further.

I want to ask if there's any proof here in plaintiff's case that the methods utilized by the longshoremen or the stevedore was improper. I think the contrary is true, isn't it?

What do you say, Mr. Baxter?

Mr. Baxter: It was not proper, your Honor.

The Court: Is there proof?

Mr. Baxter: Yes.

The Court: Where was the proof?

Mr. Baxter: The hatch boss said it's supposed to be a solid floor as best they can make it. They are not supposed to leave holes. That was what the hatch boss said, the supervisor said. He was supervising the actual operation.

The testimony of the plaintiff himself was, your Honor, that he had left holes in other parts of the stow over which he didn't fall. His accident was in the other side where he didn't lay the separation paper. It's a trap as far as he is concerned with paper over a hole.

The Court: What is your recollection of the

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proof, Mr. Ingram?

Mr. Ingram: Your Honor, my recollection is that Mr. Lepore, the hatch boss, testified that a floor was laid between each tier of cargo and there were no holes in the cargo itself.

Motions to Dismiss

As far as my recollection of plaintiff's testimony, plaintiff said that it was general cargo of various sizes and shapes, and that there were spaces between the holes, and that he testified on the deposition, which was read into the record, that this was a normal occurrence, that there would be holes in general cargo.

The Court: Let me see the deposition, the area.

Did you mark it?

Mr. Ingram: Yes, I did, your Honor. It was page 10, over onto page 11, your Honor.

(Pause.)

The Court: Read this, counsellor.

Mr. Baxter, read this.

Mr. Baxter: I said—

The Court: I said, will you look at that.

Mr. Baxter: I did look at it. It conforms exactly to what I said to the Court.

The plaintiff said he left holes or covered over holes because the question was, "Were you leaving holes?"

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The Court: Read all of that.

Mr. Baxter: Page 10, line 15:

"Q. Were you leaving holes or spaces between the cargo? A. Wherever there was a hole on top, where we could, yes. Underneath, if there was holes underneath there, we couldn't see it, naturally.

"Q. But I mean, when you first were putting in these different size pieces of cargo, were there any spaces left between the pieces? A. You always have some spaces. We were just finishing up."

The Court: That is the part I refer to.

Motions to Dismiss

Mr. Baxter: Yes. He didn't cover the spaces that had holes in it. He testified that he covered the other side and that his——

The Court: No, I am referring to that last statement where he said you always have holes.

Mr. Ingram: I believe your Honor is referring to page 11.

Mr. Baxter: I didn't get to page 11. His Honor was on page 10. He said, "You always have some spaces."

I think the jury knows that when you have different size cases, they are not going to mesh like a brick wall.

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The Court: So what? Where does that leave you?

Mr. Baxter: Let's assume it is supposed to be solid. We have the testimony his foot went down three feet. Therefore, it wasn't solid. That is a question of fact.

The Court: I don't doubt that there probably wasn't a solid situation there, but that is the situation which the plaintiff seems to have approved.

Mr. Baxter: The proof doesn't approve or disapprove. The plaintiff works in a separate part and he fell in another part where he didn't make the stow.

The Court: I didn't hear that.

Mr. Baxter: Yes, sir.

The Court: Do you recall that?

Mr. Ingram: Not that part, your Honor.

The Court: He testified, to my recollection at least, that he worked in the square of the hatch on the 'tween deck and it was that area in which he fell. I don't know what you mean.

Mr. Baxter: He didn't load that part. He testified that he put it on the inshore side

Motions to Dismiss

The Court: He may not have loaded it——

Mr. Baxter: Your Honor——

The Court: Will you stop interrupting me?

Mr. Baxter: I hadn't finished, your Honor.

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Your Honor interrupts me. I'm sorry we are interrupting each other.

May I finish what I am saying?

The Court: Yes, if you haven't.

Mr. Baxter: I haven't finished, your Honor.

The testimony was that he laid the separation paper on the inshore side and he fell on the other side where co-workers had laid it. That is the testimony.

Now, what he does on his side in his stow has nothing whatsoever to do with what was done by co-workers. To him it's a trap when it was overlaid with paper.

The Court: Let me see that again, the deposition.

You don't dispute this testimony?

Mr. Baxter: No, sir. It was conceded, in fact.

The Court: The question on page 10, line 25, is:

“Q. You tell me that you always have some spaces because the cargo is different sizes and shapes, is that right? A. Yes. You always have some space. You can't close up all the spaces.”

In other words, that's par for the course from what I interpret it.

Mr. Baxter: All he is saying there, your Honor,

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is the fact you can't close and mesh them——

The Court: Isn't that enough?

Motions to Dismiss

Mr. Baxter: No. They should have put dunnage there, anything——

The Court: Where is there any proof of that?

Mr. Baxter: Here you have the paper merely put over an open space——

The Court: Finish up. Is there any proof here that this method was out of line?

Mr. Baxter: Yes, sir.

The Court: Who said that?

Mr. Baxter: The hatch boss said it should have been a smooth floor. The fact of the matter is it wasn't a smooth floor. Where this man fell, his foot went down three feet.

The Court: Do you remember any such thing from the hatch boss?

Mr. Ingram: The hatch boss did say they put dunnage between each tier and they had a solid floor——

Mr. Baxter: Never——

The Court: Don't interrupt him.

In other words, what I draw out of this, if they put it over, put the paper over or something over it, that is one thing. But there is no proof here that the method

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employed was extraordinary or abnormal or deficient.

Mr. Ingram: On that point, your Honor, plaintiff himself testified that this was the normal way, that you always have spaces. He himself knew it. He put paper over.

A shipowner doesn't owe an accident-free ship to a longshoreman, especially in a situation when the loading longshoreman knows there are holes. He is leaving the spaces and he is putting separation papers over holes. He knew it was there. He's testified as to what the standard is.

Motions to Dismiss

Mr. Baxter: If I may be heard, your Honor. First of all, your Honor, I would like the record checked. The word dunnage was never used by the hatch boss.

The Court: It doesn't have to be used.

Mr. Baxter: We have just had a representation from defense counsel—

The Court: I didn't interpret it that way.

Mr. Ingram: It seemed to me, to my recollection, he did say there were no holes in the cargo.

The Court: That is a different thing from what you said.

Mr. Ingram: My recollection is not absolutely clear on that. I don't want to make a representation to the Court—

(75)

Mr. Baxter: I can make that representation because the word dunnage was never mentioned. He said it was a tight stow, that's the way it should be.

The Court: May I speak, Mr. Baxter, if you don't mind?

Mr. Baxter: Yes, sir.

The Court: Is there anything other than this testimony here which says anything about the custom or about the practice? I am speaking of the deposition, page 10.

Mr. Baxter: Your Honor, the only testimony here is what he was asked. That's not custom. What he did was what he was asked.

The Court: So it's only this page 10 that's in about the item of custom; is that correct?

Mr. Baxter: No, it is not, sir.

The Court: That is what I asked you.

Mr. Baxter: It wasn't correct. I stand on that.

The Court: What else is there?

Mr. Baxter: Sir, if I may answer your question—

Motions to Dismiss

The Court: I am asking you. You may answer it.

Mr. Baxter: Then I will. He was asked what you do, he was not asked custom. He was asked what he did. He said what he did, what he has experienced. That is not
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the question here, your Honor.

The Court: Whether it's the question, the answer is broader than the question. There was no objection to it.

Mr. Baxter: I made my objection to the reading of the transcript, your Honor.

The Court: That doesn't apply to any particular portion of it. In consideration of the reading, I ruled as I believed was proper. I reiterate that. When it comes to a particular part, there must be a particular objection. You are, I think, out of line there.

The question is:

"Q. When you first were putting in these different size pieces of cargo, were there any spaces left between the pieces? A. You always have some spaces."

"You" is a sort of universal term, everybody has some spaces. "We were just finishing up." So there are spaces there and we always have them. That's what he says.

Mr. Baxter: Sir, this was done through an interpreter where we have the third party.

The Court: I am not concerned with that whatsoever.

Mr. Baxter: I am commenting on your universal of you.

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The Court: I am saying that's a fair and proper interpretation of that answer.

Motions to Dismiss

Mr. Baxter: When we say "If the Court pleases," using the third party singular, this is the same thing here in Italian.

Mr. Ingram: Objection to this.

The Court: I don't agree with your interpretation, Mr. Baxter.

Mr. Baxter: I say it's a question of fact here. Whether it means the third party, you or it or they, the nebulous they that we always hear about——

The Court: That is a different story.

Mr. Baxter: He says you.

The Court: I know he says you.

Mr. Baxter: I think he means the third party, as we address many things in the third party singular.

The Court: Third party?

Mr. Baxter: We say "if the Court pleases."

The Court: It happens to be second person.

Mr. Baxter: Third. In Spanish and in Italian——

The Court: Wait a minute. Are you trying to impugn the interpretation by this interpreter?

Mr. Baxter: No. You say it's universal you. I say it can be interpreted as a question of fact for the jury
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that it's the third party singular.

The Court: I am going to take a little recess. Then I will attempt to determine this. Obviously it seems to me there is no proof here of negligence on the part of the ship.

Mr. Baxter: I think there is. I think there's notice.

The Court: Where is the notice?

Mr. Baxter: The notice that it was sufficient time for constructive notice. They have been loading this ship. They were finishing off the ship.

Motion to Dismiss—Granted

The Court: I shall determine it in a little while.

(Recess.)

(In open court; jury absent.)

The Court: In this case the plaintiff contends that there was so-called crevices or spaces between portions of the general cargo stowed away in the 'tween deck of the third hatch on this vessel. There seems to be no testimony as far as I have heard or that which has been suggested to the effect that this method which was utilized as stated by the plaintiff in his testimony, in his deposition and as stated by the hatch boss, to the effect that the method used was improper.

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In the deposition portion which was read in, page 10 and going over partly on page 11, these question were given and these answers were made, line 15:

"Q. Were you leaving holes or spaces between the cargo? A. Wherever there was a hole on top, where we could, yes. Underneath, if there was holes underneath there, we couldn't see it naturally.

"Q. But I mean when you first were putting in these different size pieces of cargo, were there any spaces left between the pieces? A. You always have some spaces. We were just finishing up.

"Q. You tell me that you always have some spaces because the cargo is different sizes and shapes, is that right? A. Yes. You always have some space. You can't close up all the spaces."

The motion is granted.

See Nuzzo against Rederi, 304 F. 2d, Second Circuit,

Motion to Dismiss—Granted

1962, page 506, and particularly item 2, corresponding to the headnote on page 508, and see Uzner against Luckenbach Overseas Corporation, 400 U. S. 494, 1971.

I, therefore, direct the entry of an order dis-

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missing the case of the plaintiff here, the complaint here, upon the grounds aforesaid, no cause of action being stated, and with costs. That's it.

Bring in the jury, please.

(Jury present.)

The Court: Mr. Foreman and members of the jury:

I have disposed of this case as a matter of law. There is no question for the jury.

So your further services are no longer required.

Thank you for listening as far as you did.

(Jury excused.)

The Court: All right.

Judgment Appealed From

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The issues in the above entitled action having been brought on regularly for trial before the Honorable Richard H. Levett, United States District Judge, and a jury on December 11, 1973, and at the conclusion of the plaintiffs case, defendant having moved the Court to dismiss the action because of no proof by the plaintiff and no cause of action being stated, and the Court having granted the said motion, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, Koninklijke Nederlandsche Stoomboot Maatschappij. N. V. (Royal Netherlands Steamship Line), have judgment against the plaintiff, Giovanni Gentile, dismissing the complaint with costs to be taxed.

Dated: New York, N. Y.
December 11, 1973

RAYMOND F. BURGHARDT
Clerk

Notice of Appeal

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the undersigned hereby appeals to the United States Court of Appeals for the Second Circuit from so much and such parts of the order of the Honorable Richard H. Levet and the judgment thereon dated and filed on the 11th day of December, 1973, as grants defendant's motion dismissing plaintiff's action at the close of the plaintiff's case for failure to prove a cause of action.

PLEASE TAKE FURTHER NOTICE, that the undersigned hereby appeals from each and every part of the aforesaid order and judgment and from the whole thereof both upon the facts and upon the law.

Dated: New York, New York
January 8, 1974

BERNARD K. ZIMMERMAN
a Member of the Firm

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